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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/550,622	08/03/2006	Katya Ivanova	J3715(C)	4634

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UNILEVER PATENT GROUP
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EXAMINER

YU, GINA C

ART UNIT	PAPER NUMBER
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1617

NOTIFICATION DATE	DELIVERY MODE
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11/24/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary	Application No. 10/550,622	Applicant(s) IVANOVA ET AL.	
	Examiner GINA C. YU	Art Unit 1617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on November 30, 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4,5,8,10,11,13 and 15-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,5,8,10,11,13, 15-17, 19 is/are rejected.
- 7) ☒ Claim(s) 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/30/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 30, 2009 has been entered.

All claim rejections which were indicated in the previous Office action dated May 29, 2009 are withdrawn in view of claim amendment filed on November 30, 2009.

Allowable subject matter was indicated to applicant's attorney, Karen Klumas, during a telephone interview on November 27, 2009. However, in view of a newly discovered reference, a new rejection is made in this Office action as set forth below.

Allowable Subject Matter

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim Objections

Claims 16 and 19 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim.

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Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claims 16 and 19 depend on claims 15 and 1, respectively, and state "wherein if hair styling polymer is present, it is present in an amount below 0.01 wt % of the hair treatment composition". The limitation does not affirmatively require the compositions of claim 1 and 15 contain hair styling polymer, and fails to further limit the base claims.

Claim Rejections - 35 USC § 112 (New)

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4, 5, 8, 10, 11, 13, 18 and 19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Amended claim 1 recites, "optionally, one or more additional components suitable for rendering the composition aesthetically acceptable or to aid use". The metes and bounds of the scope of the claim cannot be ascertained, as applicants have not defined what these additional components are. Furthermore, "aesthetically acceptable" is a term of degree, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.

Also in claim 1, the phrase "to aid use" also renders the claim vague and indefinite, as the claim is directed to a composition which is merely suitable and capable for hair treatment, and no "use" of the composition is given patentable weight.

The remaining claims are rejected as they depend on the indefinite base claim.

Claim Rejections - 35 USC § 103 (New)

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4, 5, 8, 10, 11, 13, 15-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Midha et al. (US 5565193).

Claims 1 and 15 are directed to hair styling mousse compositions containing silicone pressure adhesive polymer in the form of emulsion comprising a hydrocarbon solvent and a surfactant prior to addition to the composition. Since the claimed subject matter is a composition of matters, whether the silicone polymer is provided in the form of such emulsion is not given patentable weight; only the structural limitation implied, i.e., a final composition comprising the solvent material and the surfactant will be considered. See In re Thorpe, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985) (citations omitted).

Midha teaches the utility of silicone grafted adhesive polymer in low level of a volatile hydrocarbon solvent in hair styling art. The reference teaches hair spray compositions and hair setting compositions in aqueous solutions comprising the adhesive polymer which provides improved hair feel and hair hold performance. See col. 1, line 61 – col. 2, line 61. Two other essential components of the prior art is 1) polar solvent phase such as water; and 2) a volatile, nonpolar, branched chain

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hydrocarbon which acts as a solvent for the silicone portion of the silicone grafted copolymer. See col. 9, line 6 – col. 10, line 51. Isoparaffin and isododecane are particularly mentioned. The reference further teaches plasticizer, surfactants, and optional Ingredients may be used. See col. 10, line 52 – col. 14, line 21. Formulating the composition in a form of mousse and in a pressurized aerosol container with a propellant is suggested in col. 15, lines 50 -67.

Although Midha does not disclose a specific mousse formulation, the reference explicitly teaches and suggests making a hair styling mousse. Therefore formulating a mousse with the silicone adhesive polymer, water and a hydrocarbon solvent with additives such as surfactant would have been an obvious modification of the prior art teaching. The skilled artisan would have had a reasonable expectation of successfully producing a hair styling mousse with the desired tactile feel and styling benefits. The presently claimed method of using such composition by contacting the hair is an obvious use.

Response to Arguments

Applicant's arguments with respect to claims 1, 4, 5, 8, 10, 11, 13, 15-19 have been considered but are unpersuasive in part and moot in view of the new ground(s) of rejection in part.

Applicant asserts that the solvent selection for the pressure sensitive adhesive emulsion has a critical effect on the styling performance. Referring to comparative example shown in the specification, applicant asserts that emulsions in which the solvent component is a hydrocarbon-containing non-silicone organic solvent provides

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better high humidity curl retention than emulsions when the solvent component is a silicone solvent. However, as discussed above in the section 103 rejection, Midha suggests such holding property is expected, as the prior art discloses using silicone adhesive polymer and the same hydrocarbon solvent, isododecane, which is the solvent of the commercially available PSA product applicant has employed in the present invention. The utility of silicone pressure sensitive adhesives in hair styling art has been already known, as evidenced by the prior art and admitted by applicant. Given the teachings in Midha of the improved tactile feel and holding properties of the adhesive polymer, hydrocarbon solvent and a polar solvent, a skilled artisan would have obviously expected that applicant's composition would impart desired sensory feel and hair holding property.

Applicant's arguments with respect to Clapp et al. (US 6887859) are rendered moot, as the rejection has been withdrawn in view of applicant's claim amendment.

Conclusion

1, 4, 5, 8, 10, 11, 13, 15-17 and 19 are rejected.

Claim 18 is objected to.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to GINA C. YU whose telephone number is (571)272-8605. The examiner can normally be reached on Monday through Thursday, from 8:00AM until 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fereydown G. Sajjadi can be reached on 571-272-3311. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/GINA C. YU/
Primary Examiner, Art Unit 1617